Brown and Root U.S.A., Inc. *and* United Paperworkers International Union, AFL–CIO, CLC, and Local 162. Cases 17–CA–15292, 17–CA–15397, and 17–RC–10579

September 30, 1992

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On March 4, 1992, Administrative Law Judge David G. Heilbrun issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this decision.

The Respondent has excepted to the judge's finding that it violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on September 4, 1990, and by subsequently unilaterally changing certain terms and conditions of employment. We find merit to these exceptions.

The pertinent facts, as more fully set forth in the judge's decision, are as follows. On September 4, 1990, the Respondent received at its corporate headquarters a letter from an attorney representing the Brown and Root Employees Group, a group of employees at the Valliant plant who had previously filed a petition to decertify the Union. The September 4, 1990 letter demanded that the Respondent withdraw recognition from the Union. Enclosed with the letter were copies of individual forms signed by 139 of the Respondent's 270 employees, each requesting that the Respondent withdraw recognition, and stating that the employee did not wish to be represented by the Union. The Respondent compared the names on the forms against a list of current employees and, in a few instances, called the Valliant plant management to verify that the individual named on a form was currently working at that facility. When this comparison revealed that the forms apparently included the signatures of a majority of unit employees, the Respondent faxed to the Union a letter immediately withdrawing recognition. This letter was transmitted by approximately noon of the same day that the forms were received.

On September 5, 1990, the Brown and Root Employees Group withdrew the decertification petition. On or about September 7, 1990, the Respondent announced a wage increase, increased the rate at which vacation time was accrued, and implemented a 401(k) plan and a new, enhanced medical plan. These changes all were effective on or about September 10, 1990.

On September 24, 1990, the Union filed a representation petition for the Valliant plant. On October 11, 1990, an election was conducted in which 114 votes were cast for and 145 votes were cast against the Union, with 1 challenged ballot, a number insufficient to affect the results. The Union filed objections to the election which were based on the same conduct alleged to have constituted unfair labor practices in the instant complaint.

The judge found that the Respondent's withdrawal of recognition was unlawful because it was motivated by ''malice and cunning,'' rather than a good-faith belief that the Union no longer represented a majority of unit employees. Notwithstanding the Respondent's showing that it had received forms signed by a majority of unit employees requesting that the Respondent withdraw recognition and stating that the employees no longer wished to be represented by the Union, the judge found that the withdrawal of recognition was unlawfully motivated based on the following: (1) the Respondent withdrew recognition a few hours after receiving the forms, a period of time which the judge viewed as insufficient for the Respondent's claimed verification of the 139 signatures; (2) the Respondent's headquarters staff violated the request of the employees' attorney that their names not be disclosed to management at the plant; and (3) the Respondent's headquarters staff did not ask the plant management if they knew of any facts which would indicate that the Union in fact was still the majority representative.

It is well-settled that an employer may lawfully withdraw recognition from a union that no longer has majority status, or where the employer has a reasonable good-faith doubt, based on objective considerations, of the union's majority status. *Laidlaw Waste Systems*, 307 NLRB 1211 (1992); *Market Place*, 304 NLRB 995 (1991). Here, it is undisputed that the Respondent received written statements indicating that 139 of its 270 unit employees demanded that it withdraw recognition from the Union and stating that the employees did not want the Union to represent them. Moreover, we note that the judge rejected the General Counsel's assertion that the Respondent had engaged in unfair labor practices prior to the withdrawal of recognition and no party has excepted to these findings.[1] Under the circumstances present in this case, these facts, without more, are sufficient to establish at least a reasonably grounded good-faith doubt, based on objective considerations, of the Union's majority status. See generally *A. W. Schlesinger Geriatric Center*, 304

[1] No exceptions were filed to the judge's finding that the Respondent's captive-audience speeches to employees, and the suspension of an employee, were lawful.

NLRB 296 (1991) (employer received several pages of petition signed by employees and saw others; total number of signatures constituted a majority of unit employees). Accordingly, we find that the Respondent's withdrawal of recognition was lawful.

The judge's conclusion that the Respondent's withdrawal of recognition was not ''bona fide'' appears to rest on circumstantial evidence that he viewed as indicating that the withdrawal of recognition was motivated by union animus. Even assuming arguendo that such evidence is indicative of animus and that the Respondent's subjective motivation is relevant to a determination of whether its withdrawal of recognition was lawful in the circumstances here, the Board has not found that conduct such as that relied on by the judge establishes that an employer's withdrawal of recognition is not lawful. See *A. W. Schlesinger Geriatric Center*, above (employer lawfully withdrew recognition the day after it received the petition); *Harley-Davidson Co.*, 273 NLRB 1531 (1985) (employer not required to verify signatures which appear valid on their face before withdrawing recognition).[2] Likewise, the General Counsel has cited no case in which the Board has found that an employer presented with a petition seeking withdrawal of recognition must affirmatively search for contrary evidence of union support before withdrawing recognition. See *Atwood & Morrill Co.*, 289 NLRB 794 (1988) (employee expressions of union support do not negate subsequent written statements that employees no longer desire union representation). Nor, for that matter, does any party contend that such evidence exists. Accordingly, we will dismiss the complaint. In light of our finding the complaint allegations to be without merit, we shall also reinstate the petition, overrule the objections which are based on the same conduct as that alleged in the complaint, and certify the results of the election.

ORDER

The complaint is dismissed.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for United Paperworkers International Union, and that it is not the exclusive representative of these bargaining unit employees.

[2] As indicated above, the judge also noted that the Respondent's headquarters staff, who received the written statements, disclosed the names of some of the signers to officials at its plant in violation of a request by the employees' attorney that the Respondent keep their identity confidential. The Respondent asserts that this was done to determine whether those individuals were still employed in the unit. The judge provides no rationale for his conclusion that these actions demonstrate that the subsequent withdrawal of recognition was unlawful, and we perceive none.

national Union, and that it is not the exclusive representative of these bargaining unit employees.

Francis A. Molenda and *Stephen E. Wamser*, for the General Counsel.

Walter W. Christy and *Howard S. Linzy (Kullman, Inman, Bee, Downing & Banta)*, of New Orleans, Louisiana, for the Respondent.

Donald Hearn, International Representative, of Fort Smith, Arkansas, for the Union as the Charging Party and the Petitioner.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This consolidated case was heard at Hugo, Oklahoma, over a course of 4 trial days comprising April 2–5, 1991, inclusive. The charge in Case 17–CA–15292 was filed November 5, 1990, by United Paperworkers International Union, AFL–CIO, CLC (the Charging Party or the Union). Pursuant to this charge a complaint was issued December 20, 1990, and a subsequent order consolidating cases issued January 3, 1991, in which timely objections to election filed by the Union in an associated representation proceeding, Case 17–RC–10579, were deemed to ''encompass related matters'' of the then-recently issued complaint, and for that reason were consolidated with it for purposes of hearing, ruling and decision. Subsequently the charge in Case 17–CA–15397 was filed January 14, 1991, by the Union jointly with its affiliated Local 162. Pursuant to this second charge a consolidated complaint and second order consolidating cases was issued February 27, 1991 (amended on March 7, 1991, to complete case caption).

The primary issues arising from the consolidated complaint are whether Brown and Root U.S.A., Inc. (Respondent), unlawfully (a) promised its employees wage increases and improved terms and conditions of employment if they rejected representation by the Union, (b) threatened its employees with loss of jobs and performance bonus if they selected the Union for representation, (c) withdrew recognition from the Union; then granted wage and benefit increases to employees, and (d) otherwise suspended then reassigned its employee Michael (Mike) Winters because of his concerted protected activities and because he gave testimony to the Board in prior cases, and by these enumerated actions violated Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act.

In the representation case a petition was filed September 24, 1990, by the Union, seeking to again represent a unit of all full-time and regular part-time maintenance employees of Respondent. Pursuant to this petition, and a stipulated election agreement approved October 5, 1990, a secret-ballot election was conducted on October 11, 1990. Of approximately 264 eligible employee voters, 114 votes were cast for the Union and 145 were cast against. The single challenged ballot resulting from this election was not sufficient to affect its results. The Union then filed several timely objections, however on December 21, 1990, it withdrew Objection 3. The Regional Director's investigation of the remaining unwithdrawn objections resulted in the first order consolidating cases and referral of these objections to an administrative

law judge for disposition. These remaining unwithdrawn objections comprised the following:

> 1. The Employer threatened employee [sic] with loss of jobs if the Petitioner won the election.
>
> 2. The Employer implied the employees would gain benefits if the Petitioner lost the election.
>
> . . . .
>
> 4. By the above and other acts and conduct, the Employer destroyed the laboratory conditions necessary for a fair and open election.

FINDINGS OF FACT

I. JURISDICTION

Weyerhaeuser Paper Company (Weyerhaeuser) is a corporation with an office and place of business in Valliant, Oklahoma, where it is engaged in the manufacture of paper products. At all times material, Respondent, a Delaware (or Texas) corporation with an office and place of business located at Weyerhaeuser's Valliant, Oklahoma facility, has been engaged in the performance of maintenance and capital improvement projects for Weyerhaeuser at that facility. During calendar year 1989, Respondent, in the course and conduct of such performance, received goods valued in excess of $50,000 directly from suppliers located outside the State of Oklahoma. On these admitted or stipulated facts I find that Respondent is, and at all material times, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, as is also admitted, that the Charging Party is a labor organization within the meaning of the Section 2(5).

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Introductory Matters*

1. Case summary

Insofar as is known, a bargaining relationship between these parties originated when the Union was certified on January 9, 1989, pursuant to representation proceedings it had initiated in late 1988. Subsequently, and over the course of a 1-year period from April 1989 to April 1990, the parties engaged in 33 bargaining sessions without reaching a labor agreement. In late 1989 a charge had been filed concerning involuntary shift transfer imposed on union bargaining committee member Mike Winters. This was soon resolved by informal settlement agreement calling for a return to his previous type of shift work, plus minor remedial action.

Then on April 4, 1990, a decertification petition was filed, and processed toward an election scheduled for July 19 and 20, 1990. This scheduled election was postponed shortly before it would have occurred, and instead a hearing was held on August 21, 1990. Respondent's bargaining position as of early September 1990 was static, dating from the end of negotiations the previous April. Respondent had generally sought concessionary changes, with only a total 1-1/4-percent top rate increase in its wage proposal over a 3-year contract, plus fundamental revision of the retirement and saving plan and elimination of pay for performance. However in early September 1990 Respondent received signature lists sent by an attorney for the decertification petitioner, as named the Brown and Root Employees Group. These signatures were in support of an unequivocal statement that the signatory did ''no longer wish to be represented by the United Paperworkers International Union (UPIU),'' and did ''demand that [Respondent] cease recognizing'' the Union as collective-bargaining representative. The Respondent promptly acted on this material by written notification to an attorney for the Union that recognition was withdrawn. Significant wage and fringe benefit increases were also immediately implemented. The decertification petition was withdrawn on September 5, 1990. This made moot the Decision and Direction of Election that by then had issued in the decertification case. As stated above, the Union soon filed the instant and consolidated representation petition on September 24, 1990, and this was processed to the October election.

Respondent had conducted a series of campaign meetings involving small groups of assembled employees both before the scheduled July election and before the actual October election. Both sets of meetings are the subject of allegations in the consolidated complaint, while only the October meetings, these occurring within the period critical to the Union's representation petition, is the event implicit in the Union's objections to election.

As typically so in consolidated cases of this type, the Union's surviving objections dovetail to various allegations of the complaint. A separate issue, and separate consolidated CA case, relates to another involuntary shift transfer of Winters following a week-long suspension without pay. This discipline was based on a late 1990 incident occurring at the workplace.[1]

2. Employer identification

The enterprise of which Respondent is a part comprises various business organizations peaking with an overall entity that is ''Brown and Root Incorporated.'' In a course of modifying the enterprise's hierarchy and internal corporate relationships, the entity Brown and Root Industrial Services (BRIS) was established. For present purposes BRIS may be thought of as originating at numerous maintenance locations as of January 1, 1989. The Valliant employees had been somewhat advised in December 1988 of BRIS being formed; such advice being disseminated during preelection campaign meetings conducted by management. Redefinition as a BRIS facility ordinarily meant some change as to employee compensation and benefits. Such implementation was deferred at Valliant because of the labor contract negotiations then expected to begin. This facility is one of approximately 100 locations, worldwide, where the Brown and Root enterprise has large scale, industrial maintenance contracts. The Valliant location is organizationally within a central region for the United States.

When withdrawal of recognition occurred effective September 4, BRIS, as a practical matter, was installed as the employing entity for Valliant. Certain formalities of the change were deferred until January 1, 1991, ''principally'' because of tax reasons. For purposes of this decision, the captioned entity is interchangeable with BRIS, and use of the term ''Respondent'' could mean either one depending on context.

[1] All dates and named months hereafter are in 1990, unless otherwise indicated.

3. Setting

At times material to this case Respondent employed approximately 300 persons in the maintenance function being fulfilled for industrial customer Weyerhaeuser. The facility is a major paper products mill comprised of huge, complicated machines and equipment operated by Weyerhaeuser's own work force. The major manufacturing components are a wood yard, pulp mill, lime kiln, powerhouse and three enormous papermaking machines, plus related structures, processes and a general industrial complex. The operation is heavily dependent on reliable electrical power and sophisticated instrumentation capabilities.

In fulfillment of these integrated production (Weyerhaeuser) and maintenance (Respondent) functions, considerable mingling occurs between employees of the two enterprises. A significant reality at the facility is the customer-provider relationship between the two, and the fact that Respondent operates at the will of Weyerhaeuser and for its general satisfaction as to quality and reliability of services rendered. A high degree of interchange and coordination exists between Weyerhaeuser's supervisory hierarchy and that of Respondent. The Weyerhaeuser employees are also, as had been the case, represented by the Union in a separate bargaining unit. The overall and combined workplace is one in which wage and fringe benefits are highly comparable as between the two groups.

4. Terms and conditions of employment

Besides comparable wage rates the employees of both Weyerhaeuser and Respondent are covered by a group health plan. This is a contributory plan, which for Respondent's employees has typical deductible and limiting features as to health care coverage. The two work forces also have a retirement savings plan in effect. One significant difference between these two benefits was Respondent's contributory matching option, an enhancement termed the ''Super Saver'' feature. Nonparticipation in Super Saver by employees did not affect their regular retirement and savings plan eligibility. A pay for performance (PFP) plan also exists for both groups, which essentially amounts to an incentive based profit-sharing plan.

5. Comparative project sites

Among Respondent's operations at numerous industrial facilities around the country, the following locations, including status of wage increases for employees working there and date of such effectiveness, is shown in the tabulation below.

Customer	*Percent of Wage Increase*	*Date in Effect*
Watson Cogen	4.30	May 1, 1990
Champion Paper	5.30	January 1, 1989
	3.75	March 5, 1990
Inland Container	3.00	November 28, 1988
	2.50	March 4, 1990
Inland Rome	2.50	June 1, 1990
	2.00	October 1, 1990
Inland Orange	4.00	May 1989
	5.30	March 5, 1990
International Paper	3.00	February 1, 1989
	2.50	March 5, 1990
Temple Inland	Submitted	
	.....	
Texas Instruments	5.30	August 1, 1989
Texas Utilities	3.00	May 1, 1990
Weyerhaeuser	None	

The Inland Container facility is located in Mansfield, Louisiana, an estimated 3-hour drive from Valliant. In comparative terms this facility is particularly important, because during their careers employees at one location have worked at the other, and in some cases relatives of employees are working at the other facility. This condition leads to a considerable exchange of information about wages, terms, and conditions of employment at one location versus the other, or at least perceived features of employment. Additionally, there have been instances when temporary, special assignment took Valliant employees to project sites in California and Washington, where BRIS was in place and the settled features of BRIS employment policy were either learned or became the subject of aroused curiosity among persons so assigned.

B. *Credibility*

1. Preliminary

The credibility evaluations that follow are based primarily on demeanor; and, where pertinent, consideration of affidavit or other written statements made by a particular witness as to relevant happenings. Where a witness of basically normal demeanor is not credited as to a specific issue of the case, that shall be specially noted.

2. General Counsel's witnesses

(a) *Donald Hearn*—This witness, who also was representative for the Charging Party during the entire hearing, was basically credible in regard to his testimony as to chronological and overall matters that provided case context.

(b) *Michael Winters*—This witness presented with a demeanor that does not permit me to credit him in full. While a certain degree of earnestness and accuracy is surely present in Winters' overall testimony, and more particularly his description of various episodal matters, I am not satisfied that he has correctly recalled, or validly conceded, much of the tone and content of critical happenings that pertain to the issue in the case involving him. For this reason I generally extend only limited credibility to his testimony, and otherwise in quite salient regards discredit what he asserted.

(c) *Joanie Stewart*—This witness revealed some inconsistency of memory, this having a detrimental effect on much of what she covered. Her description of observing an opening portion of the Winters' incident on October 25 is too generalized to shed light on the issue. I generally discredit her testimony, in finding little of it with overall value to the case.

(d) *Roy Devon (Hoot) McKeever*—This witness testified with only limited certainty, and I expressly discredit his per-

ception that neither sarcasm or some form of laughing happened during the Winters' incident of late October. I do not find his version of management's remarks at an employee meeting in July to be reliable, largely from the effect of a successful motion to strike, and reject his description of management officials nodding in apparent assent to a remark made at an October meeting. Overall, while I do not particularly doubt his sincerity, I am not persuaded to accept any meaningful amount of his testimony.

(e) *Therrell Dingess*—This witness seemed to be particularly straining for accuracy in what he asserted, however I am not fully satisfied with the result. A mixed characterization must be applied, and I specifically reject his recollection of management's remarks during the July meeting. On this basis I essentially discredit Dingess concerning his testimony, noting however that he earnestly contradicted McKeever about the head-nodding in October.

(f) *James C. (California Jim) McKendrick*—This was an uncommonly candid-seeming witness, who testified with a demeanor that was a convincingly studied attempt to recall accurate answers respecting those questions posed to him. My negative credibility evaluation of both McKeever and Dingess is influenced greatly by McKendrick's impressively correct-sounding description of his unsolicited remark at the October meeting, and, in contrast, their mutually disparate and dubiously enlarged version. I readily credit McKendrick in full concerning his testimony.

(g) *Lee Wade Jones Jr.*—This witness was very unimpressive, testifying with a careless-seeming manner and offering only what seemed a convenient answer, while also being suggestible in his responses. On this basis I discredit Jones in full.

(h) *Jerry Cunningham*—This witness was openly biased against Respondent, and his testimony appeared driven by resentment as well as peppered with fictionalized claims and unbelievable renditions almost totally discreditable on their face. Cunningham's testimony is rejected in the entirety.

3. Respondent's witnesses

(a) *Walter Lisiewski*—This witness testified with a generally impressive demeanor, and a relatively high degree of precision and seeming accuracy in what he recalled. My overall opinion of Lisiewski is to credit him in full regarding all significant aspects of the case in which he was involved.

(b) *Bobby R. Hamrick*—This witness, a supervisory employee of Weyerhaeuser, testified with sufficiently impressive demeanor characteristics that I credit his limited presentation in full.

(c) *Gregory Glen Dagenhart*—This witness testified with a sincere-seeming manner as to justify belief in his general recollection. I credit Dagenhart in full.

(d) *Donald Dorey*—This witness testified with sufficient sincerity and valid demeanor that I also credit his testimony in full.

(e) *Larry Edward Clay*—This witness testified satisfactorily about various background matters. I credit his recollection on the points covered.

(f) *Garry Graham*—This key witness for Respondent testified in a manner causing me to be persuaded that he is truthful and reliable in all significant regards. Graham made a particularly palpable effort at accurately recalling the subtle happenings during the episode with Winters in which he was principally involved. On this, and the overall basis of his demeanor, I credit Graham in full.

(g) *James Kenneth Lee*—This witness is involved in the case rather collaterally, however I am satisfied that the testimony he did offer was truthful and accurate. On this basis Lee is generally credited.

(h) *George Tanley*—This witness, who functioned closely with Lisiewski in regard to case happenings, was comparably sincere and persuasive in his demeanor as a witness. On this basis I credit Tanley's testimony practically in full.

(i) *Earl Alvis Le Force*—This witness testified with a generally impressive demeanor, and I am satisfied that he had no partisan slant to his offerings. On this basis I credit what he covered, the effect of which is simply to reinforce a discrediting of the General Counsel's witness Lee Wade Jones Jr.

(j) *Royce Dale Coffee*—This witness seemed particularly weak in delivery, fumbled over his answers, and was uncertain of many facts. Based on this particularly poor demeanor presentation, I generally discredit Coffee and rely on other sources regarding the happenings in which he was involved.

(k) *James Gary Jones*—This witness testified in a relatively smooth, almost glib, manner, however I am not inclined to accept the sincerity of what he presented. His testimony was too artifical-sounding, almost rehearsed in its nature. For this reason I discredit Jones as to the integrity of steps in which he was involved during the fast-breaking dynamics that led to Respondent's withdrawal of recognition from the Union.

4. Significance

The assorted credibility evaluations above have a significance as to each primary issue of the case. Regarding paragraph 5 of the consolidated complaint, credited testimony determines whether remarks by Respondent's agents at the July and October meetings amounted to unlawful promises or threats. In partial regard this is also true as to the Union's surviving objections. Regarding paragraph 6, the credited testimony leads to factual findings upon which the motivating reasons for discipline of Winters may be evaluated. Regarding paragraph 8(a), the discredited testimony of Respondent's witness James Gary Jones affects a legal conclusion as to validity of recognition being withdrawn from the Union.

C. *General Background*

During the early months of 1990 considerable comment and speculation ranged throughout the worksite regarding Respondent's future as a maintenance contractor for Weyerhaeuser, and the status of terms and conditions of employment then extended by Respondent to its employees. This agitation was exemplified by anonymously printed handouts of divergent viewpoint, and by poorly understood conclusions drawn from Respondent's periodic employee publication entitled ''News & Views.'' A special source of uncertainty and rumor originated with 1989 year-end retirement and savings plan statements. Here a special, highlighted notation advised that ''matching company contribution[s] in 1990'' would not be received by employees, unless they started contributions under the ''super savings'' feature of the plan immediately. Most witnesses to the case agree that questions abounded throughout the first half of 1990, particu-

larly as to what impact the dimly known BRIS entity would have on the situation. On a purely operational side the ''bombard[ing]'' of questions led a high Weyerhaeuser official to issue a memorandum of general distribution in which production and capital improvement assurances were made.

D. *July and October Meetings*

Against this background Respondent chose to arrange employee meetings in advance of the scheduled July election, and it later also did so in October. The format was assembling 5 to 10 employees from alphabetic affinity into a training room, and plan about a half hour for overhead visual transparency projections plus an allowance for questions to follow. Lisiewski, Respondent's general manager headquartered in Dallas, Texas, traveled to Valliant and in conjunction with Tanley, the project manager at Valliant, made the presentation to employees.

The July election was postponed when Respondent was at about the point of the letter ''S'' in its alphabetic-based calling of employees, and it suspended further meetings at that point. During ones that had been held the projected transparencies showed organizational set-ups of the Brown and Root enterprise, and wage increase tabulations as set forth under ''Comparative Project Sites'' in section A,5, above. The transparencies and associated remarks, primarily as done by Lisiewski, also covered topics of insurance, retirement and savings plan, and, mostly to clarify questions arising by October, how Respondent was intending to handle the pay for performance plan.

On wages Lisiewski relied on the transparency of comparative sites, stating that it showed the facts and clarified questions, but did not signify any promises that Respondent was extending. At a July meeting one more pointed question lead Lisiewski to ascertain and report the ''top rate'' of $15.63 in effect at Mansfield. On health insurance a transparency was displayed showing coverages, premiums and deductible features, as a measure of the existing Valliant plan and what was in effect at BRIS locations. Lisiewski emphasized the premium columns of this transparency to contradict an anonymous flyer claim that employees at other sites paid an additional $196 in monthly health premiums. He coupled this display with express remarks about not offering the more appealing BRIS-type coverage if the Union were voted out. On the retirement and savings plan Lisiewski used a transparency showing total ''R & S'' balances in future years based on projections with no employee savings pay-in, versus a recurring 10 percent employee savings investment. The subject was also compared to a Weyerhaeuser plan, and these meetings clarified that the Super Saver plan of partially matching company contributions was an issue in bargaining.

When this form of meeting was resumed before the October election, and again Lisiewski appeared to lead its presentation, the transparency projector was inoperative so verbal explanations were done instead. Furthermore, Respondent's officials found that questions were fewer, and the meetings were for this reason shortened to only about a quarter hour.

In the course of the particular October meeting of midalphabetic surnamed employees, McKendrick, who had conversed casually with Tanley at the outset, punctuated the meeting as it ended by a personal statement loud enough for all present to hear that in his opinion a pulling out of Respondent from the Valliant facility would mean the permanent loss of jobs by all its present employees. I find specifically that Lisiewski and Tanley, both present and within earshot of the remark, were in fact startled by its ominous nature, but that neither gave any overt indication, by nodding in assent or otherwise, that they agreed with McKendrick's gratuitous prediction.

E. *Withdrawal of Recognition*

In point of time the originating document as to this subject was a letter dated September 4 from Tulsa-based attorney Richard Barnes. On its face as, Respondent's Exhibit 27, it appears as an ordinary business mailing of that date to Attorney Howard Linzy at New Orleans. In content the letter states:

> As attorney for the Brown & Root Employees Group, I hereby demand that your client, Brown & Root U.S.A., Inc., withdraw its recognition of the United Paperworkers International Union as the collective bargaining representative of your client's employees at Valliant, Oklahoma. I have in my possession valid petitions signed by a majority of those employees withdrawing and terminating the representational status of the UPIU.

In a second letter of similar appearance from Barnes to Linzy, also dated September 4 and in the record as, Respondent's Exhibit 28, the content was:

> Pursuant to our telephone conversation this morning, I am enclosing copies of all of the petitions signed by a majority of your client's Valliant employees. Confirming your commitment in this regard, the copies will be used by your office to verify that a majority of those employees have withdrawn the representational status of UPIU and you will not disclose the names of the signatories to management at Valliant without my assent.

This second letter transmitted numerous pages constituting a composite signature list of approximately 140 names expressing a desire to discontinue representation by the Union.

James Gary Jones is a senior employee relations representative and employed by Respondent for the past 14 years. His duties have included the handling of various labor relations and legal matters regarding the Valliant site over that timespan. Jones testified that Attorney Linzy had faxed to him both of Barnes' letters early on the morning September 4, a Tuesday. Jones asserted that he immediately compared the signatures with an employee list of Valliant employees, a process done after he had ''contacted the job site'' to verify currency of employment in certain instances. He purged a few names to reduce his employee list to approximately 270, and then compared signatures using typical employment documents on file at Respondent's office.

When the process satisfied Jones that a majority had signed the composite of petitions, he informed Attorney Linzy of his conclusion. This led to a letter from Linzy dated September 4 to Michael Hamilton, attorney for the Union, with copying to various interested persons. The content of this letter, including its highlighted manner of transmittal, is:

> *VIA FAX AND*
> *CERTIFIED MAIL RETURN RECEIPT REQUESTED*

Mr. Michael Hamilton, Esq.
3340 Perimeter Hill Drive
Nashville, TN 37221

Re: *Brown & Root USA, Inc. Valliant, Oklahoma*

Dear Mr. Hamilton:

We have just been informed by the attorney representing the Brown & Root Employees Group that a majority of employees no longer wish to be represented by the United Paperworkers International Union and have demanded that the company withdraw recognition. The company has verified that a majority of the employees do not wish to be represented by your client and, therefore, are withdrawing recognition of your union immediately.

After withdrawing recognition, Respondent immediately granted an across-the-board wage increase of 9.5 percent to hourly employees and liberalized the vacation formula. On this latter subject the entitlement to a week of vacation was reduced from four years of employment to only one. A matching 401(k) plan was installed for employees, and a medical plan drawn from the BRIS benefit package was announced, with its effectiveness to commence on January 1, 1991. Subsequently, in October, the quarterly pay for performance amount was fixed at 7.8 percent, and paid out to employees during that month.

F. *October 25 Incident*

Among Respondent's functional maintenance services at Valliant is one organizationally, and by associated job classification, called Electrical & Instrumentation (E & I). Winters is an E & I technician with 14 years service, and on October 25 was assigned to shift work. This involved a specially designed work schedule totalling 44 hours per alternate week, and best permitting full E & I coverage for needs of the facility outside regular shift times. The shift techniques augmented regular E & I personnel working an established shift to provide service for a particular area of the facility. Winters is executive vice president of the local union and a member of its negotiating committee. He was also an observer for the Union at the October election.

On the morning of Thursday, October 25 Winters arrived at the facility shortly before 7 a.m. He walked into work near to, and with observation of the presence of, a day-shift E & I technician named Shelby Brinkley, who normally worked in Weyerhaeuser's shipping department. As Winters was soon picking up job assignments at the number 3 E & I shop a few minutes after 7 a.m. the telephone rang. It was answered by Garry Graham, the E & I supervisor at that location. The caller was Marion Scott, a Weyerhaeuser employee reporting that the stencilling machine at the shipping location was in need of repair. Graham handled the entire conversation during the few minutes it lasted. At one point he spoke Winters name aloud, and after hanging up turned to Winters to state the nature of the call and make an instruction that Winters handle the repair problem. An incident ensued from this during which Winters delayed getting the repair underway in a manner which Graham found insubordinate, particularly to the extent that it was observed by numerous other employees. Specifically, as based principally on Graham's credible testimony, Winters simply grinned, laughed and impudently stalled. The behavior resulted in a mortifying sort of role for Graham, and this generated a little contagious laughter from other E & I employees also present. Graham repeated his instructions, but still no normal obedience followed from Winters. Instead he continued to exhibit a recalcitrant, ''non-verbal'' refusal to budge, and merely to repeat the remark that there was a ''day man'' for the repair problem. After a third unsuccessful request, Graham turned away from his immediate efforts with Winters. Within the next approximately one half hour Graham located Winters' shift supervisor, Royce Coffee, and the two of them jointly reported the incident to superintendent Ken Lee. A management decision followed this to suspend Winters while the full facts were investigated. The ultimate result was a 1-week suspension of Winters, coupled with his return to ordinary day shift work at the express request of Weyerhaeuser Supervisor Bobby Hamrick.

G. *Discussion*

1. Alleged promises of July

The credibility evaluations made above dictate how this issue is to be resolved. Having rejected the testimony of McKeever and Dingess, and more assuredly that of Cunningham, I find that Respondent made only permissible remarks of a preelection campaign nature during the numerous employee meetings held in July. The fact that Respondent's graphic use of overhead transparencies showed how comparative nonunion sites had, for the most part, enjoyed recent wage increases is not in itself a clear cut threat. The technique employed contrasted sufficiently with similar display of transparencies projected onto a screen for employees assembled in meetings in *Anderson Co. (ANCO)*, 305 NLRB 878 (1991). There the explicit accompanying statement of an official was that employees would ''lose'' benefits if they selected a union as their representative. The Board found this gave rise to a tendency for employees to ''hesitate in deciding to vote in favor'' of such representation, a result for which Respondent here cannot be held accountable.

On another plane Respondent's presentation at the July meetings did not expressly threaten that benefits were conditioned on nonunion status. Again this contrasts with *E & L Plastics Corp*., 305 NLRB 1119 (1992), in which a proposed retirement plan was open to employees, ''except those who are members of a collective-bargaining unit.'' On this basis the Board held, as I decline to do here, that on such a record there was nothing ''to dispel the message that the loss of benefits would be the necessary result of choosing union representation.''

General Counsel faults Respondent for not revealing the facts about BRIS to employees in an orderly fashion prior to the imminent (as scheduled) July election. A considerable buildup of rumor and circulation of clandestine literature had occurred regarding Respondent's future presence at the facility, as well as wage increase prospects and the nature of benefit programs then in effect. Lisiewski's and Tanley's clarification in regard to employer contributions toward the retirement and savings program was strictly informative and devoid of any impermissible promising. See *Fabric Warehouse*, 294 NLRB 189 (1989). On the more general point of the group meetings themselves it is sufficiently clear that cir-

cumstances justified the use of chosen format, the solicitation of questions, and the offering of accurately clarifying answers. See *Viacom Cablevision*, 267 NLRB 1141 (1983). In sum, I find that allegations of paragraph 5(a) in the consolidated complaint are not supported by probative evidence.

2. Alleged threats of October

A comparable disposition applies to paragraph 5(b) of the consolidated complaint. Here, too, the General Counsel's witnesses simply did not convincingly establish that Lisiewski or Tanley expressed any threats about loss of jobs or performance bonus as contingent on results of the October election.

The special aspect of this allegation to which the personal opinion expressed aloud by ''California Jim'' McKendrick applies, is resolved on express grounds that neither Lisiewski nor Tanley gave any affirming indication of the stated thought. Furthermore, I emphasize that McKendrick's words were, as he and others testified, only that should Respondent ''pull out'' from Valliant a job loss effecting current employees would result. The contrary testimony of discredited witnesses to the effect that McKendrick associated this prediction with the way in which employees voted in the election is disregarded. Thus, the General Counsel has not shown that Respondent was under a more stringent duty to repudiate statements associating directly to the election, and the silence maintained by Lisiewski and Tanley upon their hearing McKendrick's unexpected remarks was not unreasonable under the circumstances.

The Board has recently acknowledged that ''body language'' can be significant in response to utterances made that associate to provisions of the Act. Here the nodding that certain discredited witnesses of the General Counsel discerned is found not to have occurred, nor by any other ''body language'' did Lisiewski or Tanley reinforce the notion that a loss of jobs might occur because Respondent may seriously have been on the verge of discontinuing the maintenance contract with Weyerhaeuser. Cf. *Health Care & Corp. of America*, 306 NLRB 63 (1992).

Paragraph 5(b) of the consolidated complaint also expressly alleges that Respondent unlawfully threatened loss of the PFP bonus if employees were to select the Union for representation. The facts show (Tanley's contrary assertion notwithstanding) that Lisiewski did at least state to employees in the October meetings how the subject was on hold while Respondent prepared for the election. Lisiewski conceded this much, and Stewart's notes buttress the fact. However there is no evidence linking the deferral of calculating a regular item of compensation to the question of employee choice about the Union, as opposed to the institutional struggle that was focussing on the election. Absent this element, the alleged threatening nature of Respondent's conduct does not have an unlawful character.

3. Withdrawal of recognition

As Respondent would wish this issue viewed, a plain majority of employee signatures was presented to Respondent and upon its routine verification of authenticity a logical result followed. I do not believe this is a correct approach to the issue.

The originating Barnes' letter does not on its face show a faxed transmission to attorney Linzy. The ordinary implication from this evidence in its present form is that as dated September 4 it must have been received by Linzy no earlier than September 5. However for purposes for this analysis I assume that this letter, as well as the second one from Barnes ostensibly referencing a telephone conversation of that very morning, were both faxed between Tulsa and New Orleans early during the business day of September 4. I also note, since not particularly crediting James Gary Jones, that he testified to being an immediate fax recipient in Houston of all this correspondence simultaneously with its arrival for Linzy.

Even upon this assumption the entire sequence of activity, particularly Jones' role in the process, does not show a requisite good-faith employer belief that would warrant withdrawing recognition from the representative of a bargaining unit. The timespan in which it all occurred, and the nature of communications in the course of the September 4 date, give every indication of artificiality in the process. There are three peculiarities which in the aggregate support an inferential conclusion, well more compelling than mere suspicion, that the entire process was staged. First there was simply insufficient time for Jones to have undertaken a good-faith assimilation of the handwriting represented in well over 100 signatures, and effectively compare these to exemplars on file. Secondly Barnes' supposed followup letter explicitly directed that no disclosure of names be made to Valliant management without his assent, a condition as to which Respondent presented no evidence respecting fulfillment. Notably by Jones' version of the eventful morning he unrestrainedly contacted the facility to ascertain from his people there the employment status of several signatories; the exact thing Barnes had warned should not be done. Finally there is no showing that Jones attempted to canvass Respondent's upper management at the Valliant location to establish that no objective facts were known to exist as to contravene the signatures, many of which were by then over a month stale.

The Board has approved decisional language regarding withdrawal of union recognition doctrine in which the concept of ''pretext'' was utilized as part of evaluating requisite grounds of ''an objective basis for a good-faith belief regarding the majority status.'' *Midway Golden Dawn*, 293 NLRB 152, 156 (1989). As typically so, this decision arose in the context of employer unfair labor practices causing a ''tainted'' atmosphere to its action. See *Sterling Processing Corp*., 291 NLRB 208 (1988). The more pointed question is whether a pretextual focus may be applied when no unfair labor practices have actually occurred at the time withdrawal of recognition takes place. Cf. *Riverside Cement Co*., 305 NLRB 815 (1991). I conclude that it may; subject to a realistic assessment of the ''good-faith'' component in the process.

In *U-Save Food Warehouse*, 271 NLRB 710 (1984), the Board adopted a rationale permitting the ''cumulative effect'' of elements comprising a reasonable doubt regarding continued desire for union representation to be analyzed. I see no reason why the converse is not also true; namely that when cumulative effect of an employer's course of action permits and requires an inference that malice and cunning, all less than unfair labor practice conduct itself, has motivated the decision, this necessarily shows a lack of good faith. For ex-

ample in *Decor Noel, Inc*., 283 NLRB 911, 915 (1987), the non-relevancy of an invalid employee poll was contrasted with ''conversations'' of an unspecified nature with supervisors as an element in raising reasonable doubt.

Here, Respondent's actual steps are heavy with suspect motivation. It gave pro forma attention to the signature lists, even though ''[proper authentication]'' of such signatures is not required when they are ''apparently'' of those within the bargaining unit at issue. *Guerdon Industries*, 218 NLRB 658, 661 (1975). It did not however heed the nondisclosure condition of the tendering attorney, nor is there any explanation for the undue haste in making such a critical conclusion. *U-Save Food Warehouse*, supra, also involves the noteworthy adoption by the Board of rationale turning on the ''gestaltist'' nature of that employer's action, a word inviting inferential weighing of factors that might expose an actual basis of the withdrawal of recognition which rests not on good faith but instead on manipulativeness. On this basis Respondent's reliance on *Gulfmont Hotel Co*., 147 NLRB 997 (1964), and *Windham Community Memorial Hospital*, 230 NLRB 1070 (1977), is unavailing.[2] I comparably reject Respondent's reliance on *Randle-Eastern Ambulance Service*, 230 NLRB 542 (1977), where a Board finding of unlawful withdrawal of recognition was not enforced on appeal; a holding, nevertheless, which the reviewing Federal Court of Appeals was constrained to term a ''close case.'' *NLRB v. Randle-Eastern Ambulance Service*, 584 F.2d 720, 729 (5th Cir. 1978). In sum, I hold that a bona fide withdrawal of recognition did not take place, and its implementation as done on September 4 was an unlawful failure to continue honoring the Union's 1989 certification. I therefore hold that consolidated complaint paragraph 8(a), read in conjunction with paragraph 12, is meritorious in establishing a failure to bargain collectively violation under Section 8(a)(5) of the Act. Relatedly, I find a separate violation rooted in consolidated complaint paragraphs 8(b), (d), and (e) from these unilateral changes absent impasse. I exclude paragraph 8(c) from these holdings, because the PFP bonus was a regular and recurring component of employee compensation not to be combined with other, unlawful unilateral changes.

4. Suspension and reassignment of winters

While Respondent's evidence concerning prior discipline of Winters is not impressive, I am satisfied that the few seconds, and related moments that followed, of early morning on October 25 did involve insulting and insubordinate conduct on Winters' part warranting the chosen discipline. It is not a matter that Winters was right concerning Brinkley having in fact handled the necessary repairs, or that in the several minutes of fast-breaking events he personally ascertained this to be the case. Instead it is that a direct order was given, that when given an apparent need for customer service was there, and that in any event clever behaviorisms by Winters were truly, as Respondent contends, an arrogantly disrespectful mocking of Graham which warranted serious discipline.

Respondent acted cautiously to the event, investigating the subtle circumstances carefully and weighing them with due consideration to all factors involved. I am impressed with this evenhanded attention, although discounting the makeweight arguments now advanced to the effect that action taken was merely part of a progression based on past infractions. Specifically, I reject Respondent's evidence tending to show that in January, February, and March Winters had been derelict in his employee responsibilities as to warrant corrective discipline, and, more importantly, that there is any convincing showing that the recorded dissatisfactions were even communicated to him. Nor are instances of discipline against other employees of sufficient comparability as to assist in the process of evaluation.

Thus the allegation fails under the *Wright Line* test.[3] The failure is based on an absence of even the prima facie showing that Winters' protected activities were in any manner a ''motivating factor'' in the discipline chosen. On the contrary the motivating factor was purely that of remedial discipline for a serious and deliberate challenge to legitimate respect to which supervision is entitled, and a response to the predictably claimed adjustment in personnel presence desired by the essential customer. There being no other discernable factors, and considering Winters' office-holding in the Union, his key role in the election process, and his standing as a successful discriminatee in a prior case, the overall result is a failure of sufficient evidence to support the General Counsel in this regard.[4] Accordingly, I shall recommend dismissal of Paragraph 6 of the consolidated complaint on the merits.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, a labor organization within the meaning of Section 2(5) of the Act, is the exclusive representative of employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All full-time and regular part-time maintenance employees, expeditors, planning department employees and shift leadmen employed by the Employer at the Weyerhaeuser Paper Company facility in Valliant, Oklahoma, EXCLUDING office clerical employees, professional employees, guards, and supervisors as defined in the Act.

3. By withdrawing recognition from the Union, and thereafter refusing to recognize, meet, and bargain with the Union concerning terms of a collective-bargaining agreement, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

[2] Another of Respondent's citations, based on *Soule Glass & Glazing Co*., 246 NLRB 792 (1979), is too extensively distinguishable for effective comment. There the reviewing Federal court of appeals expressed how that case presented ''a virtual compendium'' of labor law issues. See *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055 (1st. Cir. 1981).

[3] *Wright Line*, 251 NLRB 1083 (1980); approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

[4] I expressly discredit Winters' testimony that Lisiewski invited him to pursue consideration for a supervisory job. Further, I reject his claim of having been deliberately ''followed'' around the facility, crediting instead Lisiewski to the effect that no scheme of this type existed nor had Respondent developed any intention that Winters be discriminated against for his protected activities or with specific reference to the resolution of Case 17–CA–14573 involving him.

4. By unilaterally instituting wage increases and benefit changes Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. Affirmatively, I shall recommend that Respondent again recognize the Union, and meet and bargain, upon request, in a timely manner concerning the terms of a collective-bargaining agreement. Nothing in the affirmative provisions of the recommended Order shall require Respondent to withdraw or eliminate any wage rates or other benefits, terms or conditions of employment which have been given to employees subsequent to September 4. See *RJE Leasing Corp*., 262 NLRB 373 (1982).

The Representation Case

Having recommended that Respondent reestablish recognition of the Union, and maintain same for such future period of time as is necessary to dissipate the effects of its unfair labor practices, I shall recommend that the Union's representation petition now be dismissed. These unfair labor practices are such that the Union's objections to election have merit;[5] however this is a moot point in view of the controlling recommendation.

The General Counsel has briefed the point of whether in this case the critical period in which to view objections may be extended back to the decertification filing of April 4. I first observe that under my holding with respect to the employee meetings in July this point is also moot, and second that it is problematical whether General Counsel has standing to press such a point on behalf of the objecting petitioner in a consolidated case of this type. However on the merits of the contention, I disagree that an extension could be made. A definite hiatus occurred in September between the decertification withdrawal and a new representation filing nearly 3 weeks later. Furthermore the petitioners in this fact situation are different, let alone representing diametrically opposed interests. For this reason the General Counsel's reliance on *Monroe Tube Co*., 220 NLRB 302 (1975), is unavailing.

[Recommended Order omitted from publication.]

[5] Pursuant to the Board's usual policy, a new election is to be directed when unfair labor practices served to interfere with exercise of a free and untrammeled choice in an election. *Dal-Tex Optical Co*., 137 NLRB 1782, 1786 (1962).